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Hamburg, October 29th. 1945.

M o t i v a t i o n

of the petition dated Oct. 29th. 1945 on the part of
Leutnant z.S.

August H o f f m a n n

against the finding and sentence of a Military Court held in
Hamburg - Curiohaus - on the 20th. of October 1945.

As defender of Leutnant z.S. August Hoffmann I
beg to submit the following against the sentence of October
20th. 1945:

I. After being sentenced Hoffmann in prison expressed
himself to the undersigned in writing as follows :

" I am charged with having executed an order of which I
was supposed to know that it was criminal. I was supposed
to know that the commander who gave the order intended
to commit a crime and that the execution of the order
was a punishable act. It is therefore claimed that I
have made myself guilty of a violation of international
law.

I have not known that I violated international law. It
was impossible for me to know that. During my 3 1/2 years
time of service I have never received any instructions
regarding international law. I have only heard of the
numerous occurrences of the war which were in dispute
regarding international law. They all showed again and
again that during a war situations can arise that make
it impossible to follow all commandments of Christian
charity.

In the evening of March 13th, 1944 everything happened
very quickly; I was excited and my thoughts went other
ways. When I received the order to shoot I did so
immediately and without thinking at all. I had already
received many orders from my commander. None of them
ever intended anything wrong. I had no doubt that this
time too the commander pursued a lawful intention.

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Only later I found time to reflect upon it whether our position justified measures which had to be of such serious consequences to the people of the "Peleus". I knew that we were in great danger. I had been instructed before the beginning of the patrol that the enemy in his airplanes had implements to detect the positions of ships and could ascertain a "Schlauchboot" at 50 miles distance. I knew what it meant if we were discovered. A discovery had to lead to the loss of our boat or at least would prevent the fulfilment of our task. I knew that the commander was in possession of instructions and news that were unknown to me. I had the utmost confidence that he was justified in his decision, yes, that he was even bound to it as commander who is responsible for the security of boat and crew.

The commander believed that the raft was devided in several small, hollow compartments which could be shot leaky and brought to sink by a machine-gun. In this however we did not succeed and the commander gave the order to burst up the rafts made of strong beams by hand-grenades, because the use of weapons of larger caliber was not possible. For this purpose we approached a raft. The moon was shining and I saw nobody on the raft, nor any wounded or dead man. If anybody had been aboard I would have urged him to leave the raft. When I threw the grenade to burst up the raft I considered it impossible that anybody could be wounded by it. When it proved to be impossible to burst up the raft by hand-grenades it was tried to destroy the rafts by ramming them. I left the bridge to take care of a wound and to prepare myself for my watch. It was then nearly midnight. When I took charge of the watch on the bridge half an hour later the boat had left the place of sinking and was steering an easterly course."

II. It is proved that Héffmann as artillery-officer received from the commander the direct order to shoot at the pieces of wreckage and to throw at them with hand-grenades.

It is proved that the commander was in possession of secret-orders and instructions which were not known to Hoffmann.

It is proved that Hoffmann and all other members of the crew of U-boat 852 had unlimited confidence in their commander and that they knew him only as honest man and soldier.

It is proved that the commander - particularly on independent, cut-off units like U-boat - had the possibility to punish disobedience during a fighting-action by immediate shoo-

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ting and that this was known to Hoffmann and the other members of the crew.

It is not proved that Hoffmann realized or had to realize that the order was unlawful and that a punishable act was demanded of him.

"The Daily Telegraph " dated October 24th. 1945 Page 3 brings under the heading " Punish U-Boat Captain " an utterance of Admiral of the Fleet the Earl of Cork and Orrery regarding the sentence disputed herewith of the following wording :

"Admiral of the Fleet the Earl of Cork and Orrery referring to the death sentence on officers of a U-boat crew for killing the crew of a vessel they had torpedoed, said that the man who should be tried was the captain, who had given the orders to shoot."

This utterance surely is based on the generally acknowledged military principle of the duty to obey which primarily binds the officer. The non-execution of an order is not only unsoldierly, but forcibly has the consequence for the disobedient to get shot by the commander or to be tried later for refusal to obey.

This principle has been laid down in all regulations of military law.

The soldier is exempt from this duty to obey only in case something obviously unlawful is demanded of him, and it must be proved to him that he knew the unlawfulness of the order. In this respect I beg to refer to the juridical discussions resulting from the Caroline - , Dovercastle- and Llandoverly-Castle cases.

As is shown by the evidence, by the statement of Hoffmann in part I and by the actually established facts as noted at the beginning of part II of this motivation, Hoffmann had to

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consider the orders given to him as lawful. At any rate it cannot be proved to him that he realized the orders to be unlawful. In view of the fact that the commander had secret orders and instructions unknown to him, Hoffmann had neither the possibility nor the right to re-examine the lawfulness of the orders. Hoffmann therefore was convinced that these orders were given ^{by} military necessity.

It must further be considered that Hoffmann at the time of the incident was only 21 years old, that this was his first U-boat patrol and the first sinking in which he took part. The situation for him was therefore entirely new. Besides, he naturally was very excited and exhausted in consequence of the tremendously hard service in the narrow U-boat with sleep lacking, in bad air and great tropical heat.

For all these reasons and with his unbounded confidence to his commander whom he knew as honest man and soldier only, Hoffmann had to believe that the commander had instructions unknown to him to eliminate pieces of wreckage for reasons of military necessity.

As is also shown by the utterance of the Admiral of the Fleet the Earl of Cork and Orrery the commander alone and exclusively is responsible for the guidance of his boat and the members of the crew. These are trained to unconditional obedience to him.

This training and the belief in the honest character of the commander and the unbounded confidence that the commander acted on basis of instructions unknown to Hoffmann and would not demand anything unlawful of him, must excuse him.

III. If, in spite of these elucidations the guilt of Hoffmann should be further affirmed, it seems that the death penalty to which he is condemned is too hard considering the special circumstances.

As the evidence in the second part of the proceedings has shown Hoffmann's life was one of loyalty to his duties and of readiness to help those who needed help no matter who they were. He comes from a respectable and honourable Hamburg family who never belonged to the NSDAP. Already as a young boy he obtained the certificate for life-saving. In school he particularly took care of weaker boys who could not get connection with the other pupils and led them back to the fellowship of the class. Being the most honest, most modest, most decent, most reliable and most loyal class-mate he was elected class-leader by his comrades. When he became a soldier and an officer he took special interest in his subordinates in the most comradelike way. In the enemy too he always saw the man who, same as he, was fighting for his country.

The best example for his readiness to help is the fact that after his own boat was sunk, he in spite of very bad wounds (MG-shots in both upper thighs paralyzing the lower limbs) and while shooting continued, jumped out of the boat in which he was with other comrades aiming to reach the coast, and saved the life of Matr.Obergefr. Damm who near being drowned was crying for help. Hoffmann, although badly handicapped, helped him into a boat and was only able to save himself by straining his last reserves.

Considering these facts, the youthful age and the exhaustion of Hoffmann at the time of the sinking - the first in which he took part - considering further the absolute confidence in the commander and his instructions, his opinion of obedience

and duty, it does not seem to me to be necessary to pronounce the death-penalty against him. This sentence would not only hit him, but would also hit his parents extremely hard.

I therefore request in case the verdict of guilty is upheld to change the sentence into a term of imprisonment.

IV.

Also by way of grace he certainly would be worthy of such grace for all the above-mentioned reasons. It is needless to say that in view of his clean and blameless life and his high conception of life he never was punished either legally or disciplinarily, except for this one case.

The defender:

R. J. [Signature]